

EXECUTIVE CHAMBERS

HONOLULU

July 8, 2005

STATEMENT OF OBJECTIONS TO SENATE BILL NO. 813

Honorable Members
Twenty-Third Legislature
State of Hawaii

Pursuant to Section 16 of Article III of the Constitution of the State of Hawaii, I am returning herewith, without my approval, Senate Bill No. 813, entitled "A Bill for an Act Relating to Employment Security."

The purpose of this bill is to conform to the provisions of federal Public Law No. 107-147, the Temporary Extended Unemployment Compensation Act of 2002, to allow Hawaii to use the moneys under this federal act (referred to as the Reed Act) for benefits and administration. Hawaii State law currently restricts the use of Reed Act funds to unemployment insurance administration purposes only.

This bill is objectionable because it restricts the Governor's power to expend and manage appropriations. Section 4 of this bill appears to violate the separation of powers doctrine. Section 4 states that no funds may be released by the Governor to the Department of Labor and Industrial Relations until all funds appropriated in section 3 by the Legislature have been "timely, fully, and completely released" to the various counties. It also provides that the allotment system powers granted to the Governor and the Executive Branch by the Legislature under part II of chapter 37, Hawaii Revised Statutes, are not applicable to the appropriation of Reed Act funds in this bill.

The Legislature and Executive Branch have distinct roles in the budget and appropriations process. Under the State Constitution, the authority to appropriate moneys for the working

of State government rests with the Legislature. However, once the appropriations bills have been enacted and the fiscal year begins, it becomes the responsibility of the Executive Branch to expend and manage the appropriations accordingly. The removal of the appropriation from the allotment system and the requirement that the allotment to the counties must be "timely, fully, and completely released" to the counties before the Governor can release any moneys to the Department, operates as a legislative intrusion into executive powers.

If this bill were to become law, the Department of Labor and Industrial Relations conceivably could only get its funds after the allotments to the counties have been "timely, fully, and completely released." Thus, if each county enters into a contract with the Department of Labor and Industrial Relations, then each county would have to complete all requirements of the contract and have received final payment before funds could be released to the Department. This interpretation poses an obvious practical problem as each county must complete its contract and receive final payment before the end of the fiscal year in order for the funds to be released to the Department of Labor and Industrial Relations before the appropriation lapses. As a practical matter, it is unlikely that each county would actually receive all of the moneys before the end of the fiscal year. And, as a consequence, the State's Department of Labor and Industrial Relations would not receive its appropriation and the funds could lapse.

Alternately, "timely, fully, and completely released" might require the Department of Labor and Industrial Relations to enter into an agreement with each county whereby the county agrees that because the allotment system does not apply, the funds will be remitted to the county upon request. The viability of this arrangement is questionable in light of communications received from the Federal Department of Labor, Employment and

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Training Administration. Pursuant to section 903(c)(2)(D)(ii) of the Social Security Act, "Reed Act funds can only be withdrawn from the trust fund when the obligation is mature. An obligation is mature when payment is due either by reimbursement of expenses or contractual agreement for advance payments." The "timely, fully, and completely released" provision is not in compliance with the federal requirement, given that the funds must first be appropriated to the State agency and those funds may not be withdrawn until there is a mature obligation.

This bill is also objectionable because the United States Department of Labor has raised a concern about section 3 of the bill that provides for an allocation of moneys for "Wagner-Peyser services for the eradication of coqui frogs and/or other invasive species." The United States Department of Labor had previously advised the states that it is impermissible to use Reed Act funds to pay for job training. This bill fails to make a distinction between the impermissible use of moneys to pay or train individuals to do eradication work from the permissible use of referring individuals to eradication jobs.

For the foregoing reasons, I am returning Senate Bill No. 813 without my approval.

Respectfully,

LINDA LINGLE
Governor of Hawaii